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WHAT CONSTITUTES A CLOUD ON TITLE. — In order to invoke the assistance of equity in a suit to quiet title, a plaintiff must establish three propositions: (1) that he himself has the legal title;[1] (2) that he is in possession and consequently unable to clear his right by an action at law;[2] (3) that the adverse claim of the defendant in fact amounts to a cloud upon his title. The necessity of the first two requirements is obvious, and the law in regard to them well settled; but the question, what constitutes a cloud which equity will remove, has provoked a well-defined conflict among the authorities. By the rule in New York, which has the sanction of the weight of authority, the plaintiff must fail if the claim of the defendant is invalid on its face, or if, although valid on its face, it would inevitably fall to the ground in an action brought upon it through evidence which the defendant would be compelled to introduce in support of his necessary allegations.[3] Moreover, *prima facie* validity will not suffice if the plaintiff could destroy the claimant's case by mere reference to the record. Thus, where the plaintiff and the defendant both claim under the same grantor, the defendant's deed is not regarded as a cloud if it is shown to be subsequent to that of the plaintiff.[4] The question whether a claim constitutes a cloud accordingly resolves itself into the question of how much the plaintiff would have to prove to defeat an action brought upon it.

This course of reasoning has led at least one jurisdiction, California, to draw an arbitrary line making the existence of a cloud depend on whether

[1] Frost *v.* Spitley, 121 U. S. 552.
[2] Orton *v.* Smith, 18 How. (U. S.) 263.
[3] Washburn *v.* Burnham, 63 N. Y. 132.
[4] Bockes *v.* Lansing, 74 N. Y. 437.

the plaintiff in an action by the adverse claimant would have to offer any evidence to overthrow the latter's claims.[5] The unfortunate result of such a distinction can best be shown by an illustration. If the plaintiff and the defendant both claim under a deed from the same grantor, the defendant's deed, although subsequent to that of the plaintiff, is a cloud, because the plaintiff, were his title attacked, would have to introduce evidence of the record. But if the defendant's deed is a forgery, or proceeded from a person outside the chain of title, the instrument, although valid upon its face, would not be a cloud, because these facts must necessarily appear and destroy the claimant's case without any proof on the part of the plaintiff. Since one claim may detract as much as the other from the value of the plaintiff's property, such a rule must often work injustice. Both the New York and the California doctrines lead to the extraordinary result of a defendant in a suit to quiet title arguing that his claim is invalid, and that he should therefore be left in undisturbed possession of it.[6]

Since the basis of this jurisdiction is to clear the plaintiff's title from claims which render it less marketable, the question should be not whether a claim fulfils certain technical requirements, but whether it is of a character to frighten away the average purchaser. In other words, if the claim is of sufficient magnitude materially to affect the market value of the plaintiff's property, it should be removed, or its creation enjoined.[7] Upon this analysis it would seem that the Supreme Court of Washington rightly allowed a bill to quiet title against a defendant who apparently had but an oral claim. *Morgan & Co.* v. *Palmer*, 79 Pac. Rep. 476. It must be admitted, however, that the authorities have not gone so far.[8]

CONDEMNATION BY ELECTRIC POWER COMPANIES. — In every action for the condemnation of land two questions must be determined, — first, whether it is wanted for a public use, and second, whether that particular land is required. Ordinarily the second question presents no difficulties. When a highway or railway is to be laid out, a considerable discretion must necessarily be given as to the particular route to be followed, and when that is once determined, the necessity of taking any given piece of land arises from its physical location upon this selected route. The same principle is involved in other cases. Thus in the days of the flowage acts for public water-mills, the proximity of a water-fall made the adjoining land necessary from its very location. The same is, perhaps, true regarding the land, other than the right of way, which is required for the operation of a steam railway. Such things as round houses and repair shops must be near the road, and a reasonable discretion has always been permitted in locating them in cities and towns where they can be used conveniently. Very evidently, however, there must be a point where the necessity for any particular land ceases and the mere convenience of the condemning company begins.

This consideration becomes of greater importance where land is condemned by electric power companies. Although as to the right of way for

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[5] Pixley *v.* Huggins, 15 Cal. 127.

[6] 3 Pomeroy, Eq. Jur., 2d ed., § 1399.

[7] Bishop *v.* Moorman, 98 Ind. 1.

[8] Parker *v.* Shannon, 121 Ill. 452. But see City of Lafayette *v.* Wabash R. Co., 28 Ind. App. 497, holding, under a statute, that the plaintiff need not describe the defendant's claim.